

## Agricultural Law Memo

**ALM 10-04**

August 9, 2010

**TOPIC:** Small Plot Farming: Amendments to Chapter 40A, Section 3

**ISSUE:** On Thursday, August 5, 2010, Governor Patrick signed into law Chapter 240 of the Acts of 2010. Section 79 of Chapter 240 amends General Laws Chapter 40A, Section 3, by adding as an additional category of agricultural uses protected by that statute any parcel of 2 acres or more that generates annual revenues from the sale of products of \$1,000 or more per acre. The purpose of this ALM is to explain the meaning of this addition.

Chapter 40A, Section 3, provides a conditional exemption for the use of land and the construction and use of structures on land for the primary purpose of commercial agriculture. It provides that no zoning ordinance or by-law may prohibit, unreasonably regulate, or require a special permit for the use of land and the construction and use of structures that have a primary purpose of commercial agriculture. Prior to amendment, Section 3 applied to (1) parcels of land of any size devoted primarily to commercial agriculture within districts zoned for agriculture, and (2) parcels of land of five acres or more devoted primarily to commercial agriculture within any zoning district. Neither of these has a minimum revenue requirement.

As amended, Section 3 provides an additional third category of protection: (3) parcels of land of 2 acres or more if the sale of products from the agricultural use generates \$1,000 per acre or more of gross sales. Therefore, if a parcel falls into any **one** of these three categories, the parcel will enjoy the protections of Section 3. The full text of Section 3, as amended, is attached to this ALM.

Readers should note three points: (1) the amendments to Section 3 became effective immediately upon the Governor's signing on August 5, 2010; (2) agriculture is broadly defined by reference to General Laws Chapter 128, Section 1A; and (3) the amendments do not alter the acreage requirements of other laws, such as use taxation under Chapters 61, 61A and 61B.

## Chapter 240 of the Acts of 2010

**SECTION 79.** Section 3 of chapter 40A of the General Laws is hereby amended by inserting after the word “more”, in line 25, as so appearing, the following words: or to parcels 2 acres or more if the sale of products produced from the agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture use on the parcel annually generates at least \$1,000 per acre based on gross sales dollars.

### **Amended Section 3 of Chapter 40A (inserting text in bold):**

No zoning ordinance or by-law shall regulate or restrict the use of materials, or methods of construction of structures regulated by the state building code, nor shall any such ordinance or by-law prohibit, unreasonably regulate, or require a special permit for the use of land for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, nor prohibit, unreasonably regulate or require a special permit for the use, expansion, reconstruction or construction of structures thereon for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, including those facilities for the sale of produce, wine and dairy products, provided that either during the months of June, July, August and September of each year or during the harvest season of the primary crop raised on land of the owner or lessee, 25 per cent of such products for sale, based on either gross sales dollars or volume, have been produced by the owner or lessee of the land on which the facility is located, or at least 25 per cent of such products for sale, based on either gross annual sales or annual volume, have been produced by the owner or lessee of the land on which the facility is located and at least an additional 50 per cent of such products for sale, based upon either gross annual sales or annual volume, have been produced in Massachusetts on land other than that on which the facility is located, used for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, whether by the owner or lessee of the land on which the facility is located or by another, except that all such activities may be limited to parcels of 5 acres or more **or to parcels 2 acres or more if the sale of products produced from the agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture use on the parcel annually generates at least \$1,000 per acre based on gross sales dollars** in area not zoned for agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture. For such purposes, land divided by a public or private way or a waterway shall be construed as 1 parcel. No zoning ordinance or by-law shall exempt land or structures from flood plain or wetlands regulations established pursuant to the General Laws. For the purposes of this section, the term "agriculture" shall be as defined in section 1A of chapter 128, and the term horticulture shall include the growing and keeping of nursery stock and the sale thereof. Said nursery stock shall be considered to be produced by the owner or lessee of the land if it is nourished, maintained and managed while on the premises.